

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

**42 CIVIL APPLICATION NO. 11950 OF 2017
IN SAST/165/2017**

RAJENDRA MANIK SHINDE (DIED)

AND OTHERS

.. Applicants

VERSUS

BABASAHEB BHANUDAS DESHMUKH

AND OTHERS

..Respondents

...

Advocate for Applicants : Shri Prashant K. Deshmukh

Advocate for Respondent No.3 : Shri S.V. Natu

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CORAM : P.R. BORA, J.

Dated: July 30, 2018

PER COURT :-

1. Heard Shri Deshmukh, the learned Counsel appearing for the applicants and Shri Natu, the learned Counsel appearing for respondent no.3. Respondent nos.1 and 2 though are duly served, have not entered the appearance in the matter.

2. The delay of 4855 days has occurred in filing the Second Appeal by the present applicants. The same is sought to be condoned in the present application. The learned Counsel for the applicants submitted that, the matter was entrusted to the Senior Counsel practicing in the High Court for filing the Second Appeal and the applicants were under *bona fide* belief that, the

learned Counsel must have filed the appeal and when there was no communication from him, their presence was not required before the High Court.

3. In the application, the following is the explanation given for occurrence of delay.

“The advocate for the applicants in the Lower Court had handed over the certified copies of the documents to the senior advocate at Aurangabad for filing the second appeal against the said decisions. However, the senior advocate did not file second appeal in this Hon’ble High Court but it was told in the enquiry that the second appeal is filed and it is pending on the ground of delay and after condoning the delay the second appeal will come for admission. The applicants relied on the words of the advocate and did not make enquiry about the filing of the second appeal. The applicants after some years made enquiry about the second appeal through another advocate and he told that, the second appeal is not filed. So, the advocate of Osmanabad again applied for certified copies of the documents and forwarded to the present advocate when he was at Osmanabad and directed to file the second appeal along with the application for condonation of delay. There is no fault of the applicants for approaching in this Hon’ble High Court but due to reliance on the advocate at Aurangabad, the delay has been caused to file the second appeal. The applicants have no knowledge about the proceedings of the High Court.”

4. On perusal of the contents of the aforesaid application, which lacks all material particulars, it does not appear to me that, any sufficient cause is made out by the applicants for condoning the huge delay of more than 12 years

in approaching this Court. The learned Counsel for the applicants though has relied upon the Judgment of the Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others, AIR 1987 SUPREME COURT 1353**, the same may not apply to the facts of the present case. Law is settled that, the delay even if may be of a longer period can be condoned if sufficient cause is made out. The reasons, which are assigned, in no way can be said to be sufficient for condoning the delay. It appears that, for the sake of providing some reason, the averments are taken in the application. The application being devoid of any substance deserves to be rejected and is accordingly rejected. Second appeal on stamp number also stands dismissed.

(P.R. BORA, J.)

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